

**WAUKESHA COUNTY BOARD OF ADJUSTMENT  
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, August 25, 2004, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

**BOARD MEMBERS PRESENT:** James Ward, Chairman  
Robert Bartholomew  
Paul Schultz  
Walter Tarmann  
Darryl Judson

**BOARD MEMBERS ABSENT:** None

**SECRETARY TO THE BOARD:** Mary E. Finet

**OTHERS PRESENT:** Jon Spheeris, BA04:063, petitioner  
Mrs. Maurice Greenberg, BA04:063, owner  
Colin Butler, Town of Ottawa Plan Commissioner, BA04:063  
Tom Hein and Nita Schaper-Hein, BA04:063, neighbors  
Robin and Rochelle Adair, BA04:064, petitioners  
Elizabeth Bingenheimer, BA04:064, neighbor  
Dolores Piper, BA04:036, petitioner  
Debra Tarnow, P.E., Jahnke & Jahnke Assoc., BA04:036

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

**SUMMARIES OF PREVIOUS MEETINGS:**

Mr. Bartholomew                      *I make a motion to approve the Summary of the Meeting of August 11, 2004, with the following changes:*

*In the case of BA04:061 PAUL SCHULTZ - John Leopold (owner), the first sentence, which reads "It should be noted that Mr. Schultz left the room prior to the discussion of this matter, as he was the petitioner." should be replaced with the following: "It should be noted that Mr. Schultz excused himself from the Board of Adjustment meeting prior to the discussion of the decision in this case because he was serving as the petitioner. He was not in the board room during the deliberation portion of the meeting."*

*In the motion regarding BA04:061 PAUL SCHULTZ - John Leopold (owner), item number three, which reads "The second sentence of the reasons shall be removed." shall be changed to read "The second sentence of the reasons paragraph shall be removed."*

*In the case of BA04:062 PAUL SCHULTZ - Jeffrey and Kate Eineicher (owners), the first sentence, which reads "It should be noted that Mr. Schultz was not in the room during the discussion of this matter, as he was the petitioner." should be replaced with the following: "It should be noted that Mr. Schultz excused himself from the Board of Adjustment meeting prior to the discussion of the decision in this case because he was serving as the petitioner. He was not in the board room during the deliberation portion of the meeting."*

*In the case of BA04:030 THOMAS AND REBECCA MUREL, the paragraph following the motion to reconsider the petitioners' request as old business, which reads "The motion was seconded by Mr. Bartholomew and carried with 3 yes votes. Mr. Tarmann voted against the motion. Mr. Dwyer voted (against the motion) in error, since he was not present at the May 26, 2004 hearing. Voting members must be present at the Public Hearing." shall be replaced with the following: "The motion was seconded by Mr. Bartholomew and carried with 3 yes votes. Mr. Tarmann and Mr. Dwyer voted against the motion."*

*In the case of BA04:030 THOMAS AND REBECCA MUREL, the paragraph following the motion to approve the petitioners revised request to remodel the interior of the existing residence, which reads "The motion was seconded by Mr. Bartholomew and carried with 4 yes votes. Mr. Dwyer voted (in favor of the motion) in error, since he was not present at the May 26, 2004 hearing. Voting members must be present at the Public Hearing." shall be replaced with the following: "The motion was seconded by Mr. Bartholomew and carried unanimously."*

The motion was seconded by Mr. Tarmann and carried unanimously.

## **NEW BUSINESS:**

### **BA04:063 JON SPHEERIS (Petitioner)** **MAURICE GREENBERG TRUST (Owner)**

Mr. Schultz

*I make a motion to adopt the staff's recommendation for denial, as stated in the Staff Report, for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Bartholomew and carried with four yes votes. Mr. Judson voted no.

The staff's recommendation was for denial. The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The property already contains a single-family residence, so denial of the requested variance would not prevent the owner from using the property for a permitted use, i.e. for a single-family residence. Hardships that are financial or economic in nature cannot be used to justify the granting of variances.

The second requirement for a variance is that the property must have unique physical conditions, which are not self-created and which prevent compliance with the Ordinance requirements. Although the property has physical limitations, due to the width of the narrow access strip, the location of the mature trees lining the driveway, and the steep topography, those conditions are not unique to the property and do not justify granting the requested variance.

The third requirement for a variance is that the variance must not adversely affect the general public interest or be detrimental to nearby properties or the natural resources in the area. Given the length of the driveway, the topography, and the narrow width of the pavement, utilizing the driveway for a second residence would increase the difficulty in providing emergency access, which is not in the public interest. Widening the paved driveway to the required width of sixteen (16) ft. would provide for better emergency access, but would threaten the long line of mature trees, which is also not in the public interest and would be detrimental to nearby properties and the natural resources. Therefore, it would not be in conformance with the purpose and intent of the Ordinance to grant the requested variance.

#### **BA04:064 ROBIN AND ROCHELLE ADAIR**

Mr. Tarmann

*I make a motion to approve the staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report, with the following additional language to be added to Condition #2:*

*A deck removal and vegetative restoration plan, prepared by a registered landscape architect, must be submitted to the Planning and Zoning Division Staff for review and approval, no later than February 1, 2005, with the plan implemented no later than June 1, 2005.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for denial of an offset variance and variances from the shore and floodplain setback requirements, to permit the free-standing octagonal wooden deck to remain in its present non-conforming location and approval of an after-the-fact special exception from the accessory building floor area ratio requirement and of after-the-fact variances to remodel a non-conforming structure in excess of 50% of its fair market value and from the floor area ratio requirements, to authorize the remodeling of the detached garage and the addition of a carport on the east side of the garage that were done without permits, subject to the following conditions:

1. The free-standing octagonal wooden deck must be removed from the property or relocated to a conforming location and the area re-vegetated with grass or other plant material. A conforming location would be at least 75 ft. from the lake and the 100-year floodplain, at least 7.85 ft. from the side lot lines, and at least 58 ft. from the edge of the 50 ft. wide platted road right-of-way.
2. If the removal of the octagonal wooden deck requires any changes to the grade, such changes may be permitted, with a Minor Grading Permit, as long as they involve less than 15 cubic yards of material and do not result in adverse drainage onto the adjacent lot. New retaining walls will not be permitted within 75 ft. of the lake.
3. Due to the lateness of the season and the difficulty the petitioners noted they previously had with re-vegetating the area currently occupied by the deck, the deadline for removal or relocation of the deck and re-vegetation of the area now occupied by the deck shall be June 1, 2005.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested offset variance and the requested variances from the shore and floodplain setback requirements, to permit the free-standing octagonal wooden deck to remain in its present non-conforming location would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Removal or relocation of the non-conforming deck would not prevent the use of the property for a permitted use, i.e. for a single-family residence. Further, denial of the requested variances would not be unnecessarily burdensome. It is felt that the area now occupied by the deck could be stabilized with vegetation; however, even if removal of the non-conforming deck requires slight modifications to the grade, that does not justify granting the requested variances.

Although the carport addition does increase the accessory building floor area ratio, that requires a special exception, rather than a variance, which does not require the demonstration of an unnecessary hardship. Although the carport must be included as floor area, it is open on three sides and does not increase the overall floor area ratio above that of other properties in the area. The remodeled garage and carport are not contrary to the public interest. The garage and carport are aesthetically appealing and enhance the appearance of the property, while providing an additional sheltered parking space and storage area. Therefore, the approval of a special exception from the accessory building floor area ratio requirement and of variances to remodel a non-conforming structure in excess of 50% of its fair market value and from the floor area ratio requirements, to authorize the remodeling of the detached garage and the addition of a carport on the east side of the garage is in conformance with the purpose and intent of the Ordinance.

#### **OTHER ITEMS REQUIRING BOARD ACTION:**

##### **BA04:036 DOLORES PIPER - request to amend condition of approval**

Mr. Judson

I make a motion to amend the decision of May 26, 2004, as requested by the petitioner's engineer, Debra Tarnow, P.E., Jahnke and Jahnke

Assoc. Inc. and as recommended in the memo from Amy A. Barrows dated August 25, 2004. This will eliminate Condition #5 and amend Condition #4 to include language in the Deed Restriction, as recommended by the Town of Merton Planning Commission, that any repaired or replaced retaining wall system on the Piper property extending greater than 4 ft. in height shall be certified by a licensed professional as to structural integrity.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The August 25, 2004 memo from Amy A. Barrows, which includes a letter from Debra Tarnow, is attached as Exhibit "A".

**BA04:054 JOHN AND PATRICIA MUELLER - request to extend 30 day appeal period**

This matter was not discussed because Atty. Deborah Price, Waukesha County Principal Assistant Corporation Counsel, advised that the Board of Adjustment did not have the authority to extend the 30 day appeal period.

**DISCUSSION OF POLICIES AND PROCEDURES:**

The Board discussed the possibility of adopting official policies and procedures. Mary Finet was directed to contact Atty. Deborah Price, Waukesha County Principal Assistant Corporation Counsel, to request copies of examples of rules or by-laws from other Boards of Adjustment to be distributed to the Board members for review.

**ADJOURNMENT:**

Mr. Bartholomew                      *I make a motion to adjourn this meeting at 8:12 p.m.*

The motion was seconded by Mr. Ward and carried unanimously.

Respectfully submitted,

Mary E. Finet  
Secretary, Board of Adjustment

Exhibit "A"